

**STATE WATER CONTROL BOARD
NOTICE OF INTENDED REGULATORY ACTION
WATER QUALITY STANDARDS AMENDMENT – EXCEPTIONAL STATE WATER
DESIGNATIONS FOR PORTIONS OF THE COWPASTURE RIVER AND SIMPSON CREEK
ISSUED: October 4, 2004
COMMENT PERIOD CLOSURES: November 15, 2004 at 5:00 p.m.**

Notice is hereby given in accordance with §2.2-4007 of the Code of Virginia that the State Water Control Board (Board) intends to consider amending the regulation entitled 9 VAC 25-260-5 et. seq. Water Quality Standards, by designating portions of the Cowpasture River and Simpson Creek for special protection as Exceptional State Waters (9 VAC 25-260-30.A.3.c).

PURPOSE: This rulemaking is intended to provide special protection to these waters to maintain their current exceptional status. By ensuring that no water quality degradation is allowed to occur in waters with exceptional environmental settings and either exceptional recreational opportunities and/or exceptional aquatic communities, the Board is protecting these special waters at their present quality for use and enjoyment by future generations of Virginians.

BASIS: Statutory authority for promulgating these amendments can be found in the Code of Virginia in §62.1-44.15(3a). Federal mandates are the Clean Water Act at 303(c) and 40 CFR 131 that allow for modifications of water quality standards. The U. S. Environmental Protection Agency (EPA) Water Quality Standards regulation (40 CFR 131.12) is the regulatory basis for the EPA requiring the states to establish within the antidegradation policy the Exceptional State Waters category and the eligibility decision criteria for these waters. EPA retains approval/disapproval oversight, but delegates to the states the election and designation of specific water bodies as Exceptional State Waters.

NEED: The rulemaking is essential to the protection of the health, safety and welfare of the citizens of the Commonwealth by protecting the water quality and living resources of these particular water bodies for human consumption of fish, recreational uses and conservation. Because of the potential impact of an Exceptional State Waters designation on permitted discharges to the water body, §62.1-44.15:4.B of the State Code requires notification and opportunity for comment from potentially impacted localities and riparian property owners, so the decision by the Board to initiate a rulemaking to amend the water quality standards to designate these waters as Exceptional State Waters was made after providing an opportunity to comment and giving due consideration to their comments.

SUBSTANCE: The waters under consideration by the Board for possible Exceptional State Waters designation are: 1) approximately 15 miles of the Cowpasture River in Alleghany County and Botetourt County, beginning at the Bath County - Alleghany County line and extending downstream to the confluence of the Cowpasture River with the Jackson River, and 2) those portions of the main stem of Simpson Creek and its tributaries that meet the exceptional environmental setting criterion.

The Exceptional State Waters category of the Antidegradation Policy allows the Board to designate waters which display exceptional environmental settings and either exceptional aquatic communities and/or exceptional recreational opportunities for added protection. Upon permanent regulatory designation of a water body as an Exceptional State Water, the quality of that water body will be maintained and protected by not allowing any degradation except on a very short term basis. No new, additional or increased point source discharge of sewage, industrial wastes or other pollution would be allowed into waters designated. In addition, no new mixing zones would be allowed in Exceptional State Waters and mixing zones from upstream or tributary waters could not extend into the Exceptional State Waters sections.

ALTERNATIVES: The primary alternative considered to date was to leave the regulation unchanged. This was not the alternative chosen because the Cowpasture River and most of Simpson Creek met the eligibility criteria, based on the information available at the time of the preliminary evaluation. The consensus of the Department of Environmental Quality's site visit team was that the Cowpasture River met the exceptional environmental setting and exceptional aquatic community eligibility criteria. The site visit

team found that the tributaries of Simpson Creek which they visited met all three eligibility criteria (exceptional environmental setting, exceptional aquatic community, and exceptional recreational opportunities), but that sections of the main stem of Simpson Creek did not meet the exceptional environmental setting criterion.

PUBLIC PARTICIPATION: The Board is seeking comments on the intended regulatory action, including (i) ideas to assist in the development of a proposal, (ii) the costs and benefits of the alternatives stated in this notice or other alternatives and (iii) impacts of the regulation on farm or forest lands. The Board is also soliciting comment on (iv) whether the eligibility decision criteria for Exceptional State Waters designation are met for each of these waters, (v) whether the upper and lower designation boundaries are appropriately delineated for the Cowpasture River, and (vi) which tributaries and sections of the main stem of Simpson Creek should be proposed for designation. Anyone wishing to submit written comments for the public comment file may do so at the public meeting, by mail or by e-mail to Jean Gregory at the address given below. Written comments must include the name and address of the commenter and must be received no later than 5:00 p.m. on November 15, 2004.

A public meeting will be held on November 10, 2004 at 7:00 p.m. at the Dabney S. Lancaster Community College, Moomaw Student Center, 1000 Dabney Drive, Clifton Forge, Virginia 24422. Both oral and written comments may be submitted at that time.

The meeting will be held at a public facility believed to be accessible to persons with disabilities. Any person with questions on the accessibility of the facilities should contact Jean Gregory at the address or telephone number given below. Persons needing interpreter services for the deaf must notify Ms. Gregory by October 29, 2004.

PARTICIPATORY APPROACH: The Board seeks comment from the public on whether to use the participatory approach to assist the agency in the development of a proposal. The participatory approach is defined as a method for the use of (i) standing advisory committee, (ii) ad hoc advisory groups or panels, (iii) consultation with groups of individuals registering interest in working with the agency, or (iv) any combination thereof.

CONTACT: Additional information is available on the Department of Environmental Quality web site at <http://www.deq.virginia.gov/wqs/> or contact Jean W. Gregory, Department of Environmental Quality, P.O. Box 10009, Richmond, VA 23240, or telephone (804) 698-4113 or 1-800-592-5482 or TDD (804) 698-4261 or e-mail at jwgregory@deq.virginia.gov.